

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PETER JOHN VIAMONTE,

Plaintiff,

- against -

CHASE BANK USA, N.A.,  
CAPITAL ONE BANK (USA) N.A.,  
MIDLAND FUNDING LLC,  
EXPERIAN INFORMATION SOLUTIONS, INC.,  
EQUIFAX INFORMATION SERVICES, LLC, and  
TRANS UNION LLC

Defendants.  
----- X

Civil Action No.: 15-cv-02669 (AJN)

**CAPITAL ONE BANK (USA), N.A.'S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT**

Defendant Capital One Bank (USA) N.A. ("Capital One"), by its undersigned counsel,  
and pursuant to Rule 12 of the Federal Rules of Civil Procedure states as follows for its Answer  
and Affirmative Defenses to Plaintiff Peter John Viamonte's ("Viamonte" or "Plaintiff")  
Complaint. All allegations not specifically admitted are denied.

**ANSWER**

**PRELIMINARY STATEMENT**

1. Capital One admits that Plaintiff purports to bring the Complaint under 15 U.S.C.  
§ 1681 ("Fair Credit Reporting Act" or "FCRA"), New York General Business Law § 380(the  
"New York Fair Credit Reporting Act" or "NY FCRA"), and 15 U.S.C. § 1692 ("Fair Debt  
Collections Practices Act" or "FDCPA"), but denies that Plaintiff has grounds for doing so.

2. Capital One denies any allegations regarding Capital One contained in Paragraph  
2. Capital One is without knowledge or information sufficient to form a belief as to the truth of

the remaining allegations in Paragraph 2 of the Complaint and, therefore, those allegations are deemed denied.

### **JURISDICTION AND VENUE**

3. Capital One does not contest jurisdiction or venue.

### **PARTIES**

4. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint and, therefore, those allegations are deemed denied.

5. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint and, therefore, those allegations are deemed denied.

6. Capital One admits that it is a bank headquartered in McLean, Virginia, and denies the remaining allegations in Paragraph 6 of the Complaint.

7. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint and, therefore, those allegations are deemed denied.

8. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint and, therefore, those allegations are deemed denied.

9. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint and, therefore, those allegations are deemed denied.

10. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint and, therefore, those allegations are deemed denied.

**FACTUAL BACKGROUND**

11. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint and, therefore, those allegations are deemed denied.

12. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and, therefore, those allegations are deemed denied.

13. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint and, therefore, those allegations are deemed denied.

14. Capital One denies any allegations regarding Capital One contained in Paragraph 14. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint and, therefore, those allegations are deemed denied.

15. Capital One denies any allegations regarding Capital One contained in Paragraph 15. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15 of the Complaint and, therefore, those allegations are deemed denied.

16. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint and, therefore, those allegations are deemed denied.

17. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint and, therefore, those allegations are deemed denied.

18. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint and, therefore, those allegations are deemed denied.

19. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and, therefore, those allegations are deemed denied.

20. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and, therefore, those allegations are deemed denied.

21. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint and, therefore, those allegations are deemed denied.

22. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint and, therefore, those allegations are deemed denied.

23. Capital One admits that it received an ACDV in October 2014 indicating that Plaintiff had disputed the accuracy of Capital One's reporting, but denies that Plaintiff disputed

the ownership of the account or that he claimed that it was opened fraudulently. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 of the Complaint and, therefore, those allegations are deemed denied.

24. Capital One denies that Plaintiff disputed the ownership of the account or that he claimed that it was opened fraudulently, and it denies any other allegations regarding Capital One contained in Paragraph 24. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 24 of the Complaint and, therefore, those allegations are deemed denied.

25. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint and, therefore, those allegations are deemed denied.

26. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint and, therefore, those allegations are deemed denied.

27. Capital One denies any allegations regarding Capital One contained in Paragraph 27. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27 of the Complaint and, therefore, those allegations are deemed denied.

28. Capital One denies the allegations of Paragraph 28 of the Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION**  
VIOLATION OF THE FCRA  
AGAINST ALL DEFENDANTS

29. Capital One incorporates and reasserts its responses to Paragraphs 1 through 28 above.

30. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint and, therefore, those allegations are deemed denied.

31. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint and, therefore, those allegations are deemed denied.

32. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint and, therefore, those allegations are deemed denied.

33. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint and, therefore, those allegations are deemed denied.

34. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint and, therefore, those allegations are deemed denied.

35. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 of the Complaint and, therefore, those allegations are deemed denied.

36. Capital One denies the allegations of Paragraph 36 of the Complaint.

37. Capital One denies the allegations of Paragraph 37 of the Complaint.

38. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint and, therefore, those allegations are deemed denied.

39. Capital One denies the allegations of Paragraph 39 of the Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION**  
VIOLATION OF THE NY FCRA  
AGAINST EXPERIAN, EQUIFAX, AND TRANS UNION

40. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint and, therefore, those allegations are deemed denied.

41. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint and, therefore, those allegations are deemed denied.

42. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint and, therefore, those allegations are deemed denied.

43. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 of the Complaint and, therefore, those allegations are deemed denied.

44. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 of the Complaint and, therefore, those allegations are deemed denied.

45. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint and, therefore, those allegations are deemed denied.

**AS AND FOR A THIRD CAUSE OF ACTION**  
VIOLATION OF THE FDCA  
AGAINST MIDLAND FUNDING

46. Capital One incorporates and reasserts its responses to Paragraphs 1 through 45 above.

47. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint and, therefore, those allegations are deemed denied.

48. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint and, therefore, those allegations are deemed denied.

49. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint and, therefore, those allegations are deemed denied.

50. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint and, therefore, those allegations are deemed denied.

51. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint and, therefore, those allegations are deemed denied.

52. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint and, therefore, those allegations are deemed denied.



53. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint and, therefore, those allegations are deemed denied.

54. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint and, therefore, those allegations are deemed denied.

55. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint and, therefore, those allegations are deemed denied.

#### **AFFIRMATIVE DEFENSES**

Without assuming the burden of proof on any defenses that would otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, Capital One alleges the following additional reasons and affirmative defenses why Plaintiff is not entitled to pursue the claims asserted in his Complaint or obtain any relief from Capital One. In addition to the Affirmative Defenses set forth below, Capital One intends to rely on all other properly provable defenses and reserves the right to amend its Answer to assert additional affirmative or other defenses to and through the time of trial in the event that its investigation or discovery indicates that additional affirmative or other defenses are appropriate.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his alleged damages.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff has not sustained any damages compensable at law as a result of any alleged act or omission of Capital One, which alleged acts or omissions are specifically denied, and any

losses Plaintiff may have suffered are the result of his own conduct and/or independent intervening or superseding causes by third parties not within the control of Capital One.

WHEREFORE, Defendant Capital One Bank (USA), N.A. prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing on his Complaint;
2. For costs of suit;
3. For an award of its reasonable attorney's fees incurred; and,
4. For such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 28, 2015

Respectfully submitted,

McGUIREWOODS LLP

/s/ Kristina M. Allen  
Kristina M. Allen  
1345 Avenue of the Americas, 7<sup>th</sup> Floor  
New York, New York 10105  
Phone: (212) 548-2164  
Fax: (212) 715-6262  
kallen@mcguirewoods.com

and

Seth A. Schaeffer  
One James Center  
901 East Cary Street  
Richmond, VA 23219-4030  
Phone: (804) 775-1174  
Fax: (804) 698-2167  
sschaeffer@mcguirewoods.com

*Attorneys for Defendant Capital One Bank  
(USA), N.A.*